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CONTEMPORARY FORMS OF SLAVERY

Implementation of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography

Report of the Secretary-General submitted pursuant to Sub-Commission resolution 1998/19

Addendum

The present addendum contains information submitted by the Government of Costa Rica.

Costa Rica

[Original: Spanish]
[23 April 1999]

Legal framework

1. The Penal Code describes offences related to child prostitution and the sale of children and establishes the corresponding penalties in the following articles:

188 - Non-fulfilment or abuse of parental authority

184 - Abduction of a minor or person under disability

167 - Corruption

168 - Aggravated corruption

169 - Procuring

170 - Aggravated procuring

171 - Pimping

172 - Trafficking in women and children

173 - Sodomy

174 - Participation of third parties related to the victim by family ties or who abuse their authority or responsibility.

2. The Costa Rican Family Code also contains rules governing the exercise of parental authority with regard to the protection of minors (chap. I, sect. III, arts. 127 to 161). In addition, the Convention on the Rights of the Child has been applicable in our system with precedence over common legislation as from July 1990.

The sale of children

3. This does not appear as such as an offence, the closest offence being trafficking in children for adoption. Chapter XVII of volume II of the Penal Code, under the title "Offences against human rights", was reformed with the addition of articles 374 and 375, imposing a custodial sentence of between one and four years on a mother, father or any person exercising the legal representation of a minor, who offers that minor for adoption, in exchange for any type of payment or fee or financial reward. Likewise, any person offering payment, a fee or a reward for the purposes of adopting a minor is liable to the same penalty, as is the person making the payment.

4. Under article 375 of the Penal Code, any person promoting or facilitating the trafficking of children to offer them for adoption, for the purpose of selling their organs, is liable to a prison sentence of 5 to 10 years.

5. Having identified offences specifically related to the sale of children, it is possible to extend the range of related offences to other rules of our

legal system, such as the non-fulfilment of duties related to parental authority or abuse in the exercise of such authority, which are referred to both in the Penal Code and in the Family Code.

6. Those criminally liable in such cases would be the parents of the child, guardians or keepers or any persons shown to have taken part in the unlawful act.

7. There is no offence in the Costa Rican legal system specifically referred to as child trafficking (tráfico). The only description which could cover that type of situation is what is known as "abduction of minor or person with a disability", established in article 184 of chapter IV of the Penal Code (Offences against the family), which stipulates as follows: "Any person removing a minor of 12 years of age or a person with a disability from the authority of his or her parents, keepers, guardians or person responsible, or holding the minor against their will, shall be liable to a prison sentence of six months to two years; if the minor has expressed consent or if over 12 years of age, the sentence shall be moderately reduced. The same sentence shall apply to any person serving as intermediary for a minor to depart from the parental authority of his parents without fulfilling the requirements of the law. The penalty shall be increased by a third if the purpose of the act is profit."

Child prostitution

8. Any minor engaging in prostitution is considered to be the victim of abuse. Any persons favouring or facilitating this type of abuse are delinquents and, according to circumstances, must be considered corrupters of minors, procurers or pimps. Such acts may be prosecuted and whoever performs them is criminally liable.

9. In articles 170 and 172, the Penal Code provides for the offences of aggravated procuring and commerce (trata) in women and children. In the first of those articles, any person, either gainfully motivated or to satisfy the desires of others, who furthers or facilitates the prostitution of minors under 18 years of age, of either sex, is liable to a custodial sentence of 4 to 10 years; in the event of deception, violence, abuse of authority or the use of any means of intimidation or coercion, and if the offender is an ascendant, descendant, husband, brother, guardian, or in charge of the minor's education, care or custody of the victim. Under article 172, any person promoting or facilitating the entry to or exit from the country of women or children of either sex for purposes of prostitution is punishable with a prison sentence of 5 to 10 years. This sentence shall be 8 to 10 years if any of the following circumstances apply:

(a) If the victim is under 18 years of age;

(b) In the event of deception, violence, abuse of authority or any means of coercion or intimidation;

(c) If the offender is an ascendant, descendant, husband, brother, guardian or in charge of the education, care or custody of the victim.

10. There are a number of offences in the Penal Code which could cover the case; they are all contained in the section of the Code devoted to sexual offences.

11. Among the offences related to sexual exploitation, procuring is the one that best covers all matters connected with prostitution and its gainful exploitation. The offence appears in two forms:

(a) Procuring: "Any person who, gainfully motivated or to satisfy the desires of others, shall promote or facilitate the prostitution of persons of either sex shall be punishable with a prison sentence of two to five years";

(b) Aggravated procuring:

"The penalty shall be 4 to 10 years' imprisonment in the following cases:

1. If the victim is under 18 years of age;

2. In the event of deception, violence, abuse of authority or any means of intimidation or coercion; and

3. If the offender is an ascendant, descendant, husband, brother, guardian or person in charge of the education, care or custody of the victim."

12. The basic type of procuring (proxenetismo) (art. 169 of the Penal Code) refers to sexual exploitation on a broader scale, outside the more personal sphere of pimping (rufianería). The person committing the offence is indeterminate: any man or woman who obliges certain persons to prostitute themselves for the purpose of obtaining some profit thereby, or else, for the purpose of satisfying the libidinous desires of others. The person engaging passively in the offence may be any man or woman who is prostituted for the profit of another. However, if the victim is a minor, the offence becomes one of aggravated procuring (art. 170 of the Penal Code). The person committing this aggravated offence is in principle indeterminate, except in the above case of subparagraph 3, where he is an ascendant, descendant, husband, brother, guardian or person in charge of the victim.

13. A condition of procuring is the intention of obtaining gain thereby or satisfying the desires of others, so that, as mentioned above, it covers the various forms of child prostitution.

14. Another type of recognized offence which is useful in dealing with the problem of child prostitution is that of commerce in women and children (trata de mujeres y de menores), which combines the notion of prostitution for gainful purposes and that of trafficking in persons to that end. As far as international prostitution networks are concerned, the relevant offence is described in article 172 of the Penal Code as follows: "Any person promoting or facilitating the entry to or exit from the country of women or children of either sex for purposes of prostitution shall be punishable with a prison

sentence of 5 to 10 years. This sentence shall be 8 to 10 years if any of the circumstances listed in article 170 apply." The sentence is extended under the terms of article 170, in this case, if the victim is under 18 years of age.

15. As it may involve child prostitution, it is worth mentioning the offence of pimping (rufianería), which invariably entails exploitation of the victim (art. 171 of the Penal Code): "Whosoever lives off the proceeds, even partially, of a person engaging in prostitution, using the gains arising from that activity, shall receive a prison sentence of between two and three years." This offence refers to a personal relationship between an abuser and a prostitute, by which the former derives profit from the activities of the latter. The person incurring criminal liability is indeterminate, and may thus be either a man or a woman, although the offence is normally committed by a man. The person passively engaging in the offence may be either a man or a woman insofar as that person is engaging in prostitution. The most frequent case is for women to be the victims of exploitation, generally by their companion. The offence may be understood as covering the cases of children prostituted for the upkeep of their parents, guardians, abuser or their own companions, so that the offence is considered to occur on a smaller and more personal scale.

Child pornography

16. For the specific case of pornography, there is the Public Spectacles Act and the Public Spectacles Commission; there is also the Act Regulating Publicity, under which such offences may be prosecuted.

17. This type of offence is not specified as such in the Penal Code. The closest offences would be corruption (corrupción) and aggravated corruption. Whoever promotes the corruption of a person under 16 years of age, by means of premature and excessive, sexual or perverse acts is liable to a prison sentence of 3 to 8 years, even if the victim consents either in taking part in the acts or in seeing them performed, and to a prison sentence of 4 to 10 years if the victim is under 12 years of age, in cases where the offender is an ascendant, husband, brother, guardian or responsible for the education, care or custody of the victim. The notion of corruption implies inciting the minor by means of pornographic magazines or videos. Corruption in this sense and pornography are very closely related.

18. The possession of pornographic material is not prohibited in Costa Rica, where only the distribution of graphic, audio or video material is regulated. Possession is only restricted for minors. The production of pornographic material is considered an offence to the extent that it implies that the persons performing sexual acts are under 16 years of age. The type of offence which is most relevant in this case, then, is "corruption", either according to the basic definition given in article 167 of the Penal Code, or in its aggravated form in article 168:

(a) "Any person promoting the corruption of a child under 16 years of age, by means of premature or excessive, perverse sexual acts, even though the victim consents to take part in such acts or to see them performed, shall be

punishable with a prison sentence of 3 to 8 years. The act is not punishable if the minor is already corrupt.";

(b) "The sentence shall be 4 to 10 years' imprisonment in the cases covered in the foregoing article whenever:

1. The victim is under 12 years of age;

2. The offence is committed for gainful purposes;

3. Deception, violence, abuse of authority or any other means of intimidation or coercion are involved; and

4. The offender is an ascendant, husband, brother, guardian or responsible for the education, care or custody of the victim."

19. Of course, this clause is not restricted to the use of children in pornography. Nevertheless, it provides a means of penalizing the offence in cases where a child used for pornographic acts has been corrupted, or if submitted to acts which are improper for his or her age and sexual maturity. To the extent that the offence covers the performance of perverse, premature or excessive acts, circumstances which are left to the judge's appreciation, it may be considered to cover cases of child pornography. As only few cases have ever been recorded, there is no recognized case-law in this respect.

20. The active offender is indeterminate, so that it may be anyone with criminal capacity, except in the cases covered by subparagraph 4 of article 168, which increases the penalty if the offender is related by filiation or has custodial obligations with respect to the child.

21. The passive person involved in the offence in both types of corruption refers to minors. However, some major omissions are worth pointing out:

(a) There is no offence if minors between the ages of 16 and 18 are involved. Article 167 in fact refers to minors of 16 years of age, which excludes and does not penalize for corruption the use in pornography of persons above that age, despite the fact that they may be children under the terms of the Convention on the Rights of the Child;

(b) Corruption is not considered an offence if the minor is already corrupt. Moreover, the absence of corruption is not presumed, which reverses the burden of proof in the sense that what is judged in the trial is not the active offender but the state of sexual perversion of the minor. This provision is contradictory, since if a minor agrees to perform acts of pornography, it is because the child must have been affected by earlier attempts at corruption. In any case, how can it be considered that a minor at that age is sufficiently knowledgeable to appreciate sexual acts of the magnitude required to constitute an offence? In this way, it becomes easy for promoters of pornography to escape responsibility, by providing evidence that they contracted the minor when the latter was already corrupt and that he or she unhesitatingly engaged in the sexual acts.

Action by institutions

22. There are programmes concerned with assistance for boys and girls who are victims of prostitution or pornography. They include: the Programme of Care for Minors at Social Risk; the branch of the Latin American Prevention and Health Education Institute (ILPES), Manos Amigas, Fundación Promoción y Acción Alternativa (PROCAL), ASOMARI (assisting girl prostitutes) and the Salvation Army.

23. The subject of child prostitution has attained high levels of complexity within Costa Rican society. This situation has led national institutions (the State and civil society) and international institutions to combine their efforts to tackle the problem.

24. The investigations which have taken place into different aspects of the subject have been sporadic and qualitative in nature; as a result, the availability of official data on the scale of the phenomenon is limited. Even so, social dynamics are steadily bringing the problem to the forefront of attention and are impelling the different sectors into taking action to deal with it.

25. In 1996 a group of public and private national and international institutions decided to join forces to embark on a course of action for the prevention and elimination of the commercial sexual exploitation of boys, girls and adolescents in Costa Rica. To that end it was proposed to establish an open reflection facility for the discussion and analysis of the problem and the preparation of a draft national action plan leading to an integrated and comprehensive approach to the problem.

26. To that end, the Executive Board of the National Children's Trust (PANI) - an autonomous institution with a decentralized administration and its own budget, and the apex institution concerned with the rights of the child - decided to establish the National Commission for Action against the Commercial Sexual Exploitation of Boys, Girls and Adolescents in Costa Rica at its ordinary session No. 97-0055, held in 1997. The Commission is made up of public bodies, NGOs and international organizations. This measure is designed to give impetus to a long-term work plan of an intersectoral character, which would encourage the effective participation of the different actors in society, including minors themselves.

27. For the purposes of its work, the Commission deems the commercial sexual exploitation of boys, girls and adolescents to be:

(a) A fundamental violation of the rights of children and adolescents;

(b) A form of abuse involving the sexual victimization of boys, girls and adolescents in connection with a commercial transaction, consideration for which may be in cash or in kind;

(c) A contemporary form of slavery;

(d) An enforced and harmful income-generating activity.

28. The following governmental and non-governmental bodies are participating:

Casa Alianza;

Defence for Children International (DNI-Costa Rica);

Office for the Defence of the Inhabitants of the Republic;

Fundación de Lucha contra la Prostitución Infantil (LUCOPI);

Fundación PANIAMOR;

Fundación PROCAL (Promoción, Capacitación y Acción Alternativa);

Fundación para el Desarrollo de la Lucha contra el SIDA (FUNDESIDA);

United Nations Children's Fund (UNICEF);

Latin American Prevention and Health Education Institute (ILPES);

Costa Rica Tourism Institute (ICT);

National Women's Institute;

Women's International League for Peace and Freedom (WILPF);

The National Directorate for the Prevention of Violence and Crime in the Ministry of Justice;

The Ministry of Security and the Interior;

The Department for the Control of AIDS and Sexually Transmissible Diseases in the Ministry of Health;

The International Programme on the Elimination of Child Labour of the International Labour Organization (ILO-IPEC);

The Technical Secretariat for Children and Young Persons;

The National Children's Trust (PANI);

The Union of Private Child-Care Institutions (UNIPRIM);

The University of Costa Rica;

The Institute for the Child (INI) and the Research and Teaching Centre (CIDE) in the National University.

29. The Group has concentrated its efforts on determining the scale of the problem and on promoting action to amend current legislation. In addition, it is promoting action to develop awareness within the population and in the

fields of prevention, repression and care. Among other reforms, it is seeking to have the preparation of pornographic material involving children designated as a crime.

Framework plan of action

30. The Framework Plan of Action proposed by the Commission is comprehensive in scope; it thus proposes measures in the fields of policy, legislation, repression, prevention, care and research. In each of these fields attention is given to the four elements identified as problem areas, namely child prostitution, pornography, sex tourism and trafficking in minors. The measures proposed include the following:

(a) The holding of meetings and working sessions for the discussion and analysis of the problem (with religious leaders and representatives of local governments, the National Chamber of Tourism and airlines and the shipping and overland transport sectors);

(b) The consolidation of means of facilitating active international cooperation with the implementation of proposals (UNICEF, ILO, ILANUD, IPEC, PANI);

(c) The establishment of facilities for continuing coordination permitting exchanges of resources and concertation of efforts (Social Council, NGOs, hotel and tourism enterprises, Ministry of Tourism);

(d) The preparation and conduct of workshops with decision-making powers, made up of institutions responsible for establishing or implementing policies, plans and programmes with a direct or indirect bearing on the problem areas (Executive Board of the Costa Rica Social Insurance Fund, PANI, the Mixed Social Aid Institute (IMAS), the Propaganda Control Office, the Costa Rica Tourism Institute (ICT), the Migration and Aliens Office, the Civil Registry, the Customs service);

(e) The preparation and dissemination of leaflets and bulletins which explain in simple terms the procedures to be followed and the bodies to be approached in order to report cases of sexual exploitation (police, NGOs, public institutions, Office for the Defence of the Inhabitants).

31. Other activities included in the Commission's Plan of Action include the signature of an agreement between PANI, ICT and UNICEF to cooperate in the campaign to disseminate information on the legal measures and penalties attaching to the use of boys, girls and adolescents for sexual commerce. Efforts are also being made to promote awareness of the psychological and social implications of these sexual practices for children and young persons.

32. At the same time, close coordination and training facilities are being maintained with the different police forces (national, municipal, transit and migration), the Judicial Investigation Service, the Public Prosecutor's Office and ICT on these subjects.

Principal successes and constraints

33. The principal successes and constraints are of different natures.

(a) In the sphere of policy:

(i) The situation of sexually exploited persons has now become a subject for political discussion and a priority theme for the national Government;

(ii) The problems are considered as a form of slavery;

(iii) The authorities at the highest level have now genuinely adopted a clear position regarding the state of exploitation in which these boys and girls find themselves;

(b) In the sphere of legislation:

Draft amendments to the Penal Code, which would permit the redefinition of penalties, or the fixing of penalties for acts which are not at present designated as punishable, are under discussion in the Legislative Assembly. However, the efforts made in various government sectors to secure agenda priority for this project, owing to the urgency of other legislative matters, have proved unsuccessful.

(c) In the sphere of repression:

(i) The inter-institutional forces in the country have joined together in the conduct of operations known as "patrols", by means of which the whole weight of the law is brought down on places where minors exposed to situations of sexual exploitation are normally to be found;

(ii) The measures available take a wide range of forms: the withdrawal of licences, the closure of premises, the expulsion of aliens without papers and, naturally, the immediate taking into care of the minors found on those premises;

(iii) Continuing efforts are being made to develop awareness and motivation within the police forces in order to develop a clear understanding that the minors found on these premises are victims and that actions of a nature to victimize them further are to be avoided;

(iv) The measures taken are marked by a high degree of inter-institutional commitment on the part of the Ministry of Public Security, the Ministry of Health, the Municipal Council of San José and the Migration Office;

(v) In February 1999 strategies were designed to use this methodology to investigate the more discreet type of premises, which are not specifically bars or nightclubs, in which this scandalous situation is regularly reported to exist;

(vi) The Costa Rica Tourism Institute has given its unrestricted support to the withdrawal of tourist licences from hotels which make their installations available for these activities and for the immediate deportation of foreign tourists who engage in the offence;

(vii) The Office of the Prosecutor for Sexual Activities in the judiciary, which has given considerable support to victims and has obtained the easing of legal proceedings affecting them, has been strengthened with regard to both geographical coverage and competence.

(d) In the sphere of investigation:

In 1998 a beginning was made with the collection of reliable information on the situations of minors who were victims of sexual exploitation. It is not yet possible to give a full picture of the situation in terms of numbers involved. It is known that there are some 200 girls on the streets and being sexually exploited in the metropolitan area of San José. However, it is appreciated that that figure represents only the tip of the iceberg. According to the reports received (the majority of which are anonymous and very difficult to corroborate), the majority of the minors are reached by beeper or cellular telephone. The transactions have the support of a network which contacts the girls or adolescents in their homes or schools and takes them directly to a private house or an apartment where the client is waiting. The investigation aspect is possibly the one which requires greatest support on account of the degree of sophistication demanded by the sort of methodology needed to arrive at the true heart of the problem. However, there is available an investigation sponsored by UNICEF, which contains important data reflecting the model of approaches made to minors; using that model, it has been possible to obtain an idea of the psychological profiles of the victims and an approximate knowledge of their social and economic condition.

(e) In the sphere of prevention:

(i) Two television campaigns have been organized showing the exploitative elements inherent in the activity. This is a way of spreading awareness of the subject and securing public support for the reporting of cases;

(ii) More financial resources are needed to keep up continuing campaigns to disseminate knowledge of rights.

(f) In the sphere of care:

(i) In 1998 a project was launched to provide care for 200 girls and adolescents in the metropolitan area in the fields of

physical and mental health, access to health services, education and nutrition. The project is financed by ILO-IPEC and FUNDESIDA and receives support and continuing feedback from all the members of the Commission. PANI, which continues to enjoy the support of the bodies on the Commission, is developing similar projects in the provinces of Limón and Puntarenas by purchasing services from local non-governmental organizations. In these two provinces the elements mentioned earlier are being duplicated to the extent possible. At both governmental and non-governmental levels there is satisfaction at the successes achieved in the all-too-short two years of intense effort in this field;

(ii) At the moment the subject is of great interest for the national and international press; both can provide a great deal of support for current measures by emphasizing the clandestine and illegal nature of the activity;

(iii) One of the major constraints which is continually being encountered in this area is the propensity of certain bodies to provide unreliable statistical data containing figures which are on occasion devoid of sense;

(iv) The Government of Costa Rica considers that the problem is not so much one of concealing information but rather of avoiding the lasting stigmatization of the boys, girls and adolescents concerned and especially those living in conditions of extreme poverty - conditions which are in no way a direct cause of the problem;

(v) There is an awareness that the problem facing us is an important one, not on account of the numbers of persons affected but because each one of them has rights and is a citizen of the country.